THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20512 OF 2005

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ORAL ORDER:

The petitioner was appointed as the authorized dealer of the fair price shop at Budathavalasa village, Laveru Mandal, Srikakulam District vide proceedings of the 3rd respondent - Revenue Divisional Officer, Srikakulam dated 11.09.2001. It is not in dispute that the vacancy of the said fair price shop was notified by the 3rd respondent by notification dated 25.08.2001 inviting applications from the eligible candidates belonging to BC category. In response to the same, the writ petitioner, the 5th respondent as well as 14 other candidates submitted their applications. The 3rd respondent having considered the relative merits of the candidates who attended the interview, appointed the writ petitioner as the fair price shop dealer. Aggrieved by the same, the 5th respondent, who is one of the unsuccessful candidates, filed an appeal before the 2nd respondent - Joint Collector, contending inter alia, that she being a graduate, is possessing higher qualification, and therefore, the appointing authority ought to have given preference to her. It was also contended that the petitioner having obtained loan under self-employment scheme from Andhra Bank for running kirana business, failed to repay the loan and as such he was disqualified as per the guidelines issued for appointment of fair price shop dealer. It appears that despite notice, the writ petitioner failed to appear before the 2nd respondent and there was no counter on his behalf. Consequently, the 2nd respondent proceeded with the appeal and having agreed with the contentions of the 5th respondent, allowed the appeal and set aside the appointment of the petitioner. There was also a direction to appoint the 5th respondent as the fair price shop dealer. It appears that in pursuance of the said order, the 5th respondent has been appointed as the fair price shop dealer and she is being continued as such. Questioning the order of the 2nd respondent dated 27.01.2005, though the petitioner preferred a revision petition, the same was dismissed by the 1st respondent – District Collector by order dated 28.08.2005. Hence this writ petition.

I have heard the learned counsel for both the parties and perused the material on record.

As could be seen from the order of the 2nd respondent dated 27.01.2005 it is clear that the appointment of the petitioner was set aside only on the ground that the 5th respondent was possessing higher qualification. The 2nd respondent observed that merit shall find preferential treatment in the selection and that apart, the 5th respondent being a lady and physically handicapped person, ought to have been selected as the fair price shop dealer, and accordingly, allowed the appeal. Though the 5th respondent alleged that the petitioner who was running kirana business was disqualified for appointment as the fair price shop dealer, the 2nd respondent did not go into the said allegation and did not record any finding and set aside the appointment of the petitioner only on the ground that the 5th respondent who was possessing higher qualification ought to have been preferred.

It is relevant to note that under G.O.Ms.No.53 dated 6.10.2003 under which guidelines were issued for appointment of the fair price shop dealers, the minimum educational qualification prescribed was a pass in 10th class. Admittedly, the petitioner passed 10th class. If that be so, the mere fact that the 5th respondent possessed higher qualification is not a valid ground for setting aside the appointment. It is true that a further allegation was made that the petitioner who was running kirana business, was not eligible for appointment as a fair price shop dealer. However, since the 2nd respondent-appellate authority did not make any enquiry and did not record any finding against the petitioner on the said allegation, I am of the view that the 2nd respondent was not justified in allowing the appeal. That apart, the 2nd respondent had also erred in holding that the 5th respondent is selected and directing her appointment as the fair price shop dealer. Even where the appointment made by the appointing authority is set aside on any ground whatsoever, the proper course would be to direct the appointing authority to reconsider and make fresh appointment.

Viewed from any angle, the order of the 2nd respondent dated 27.01.2005 as confirmed by the 1st respondent by order dated 28.08.2005 is illegal and liable to be set aside. Accordingly, the orders dated 27.01.2005 and 28.08.2005 passed by the

respondents 2 and 1 respectively, are set aside and the matter is remitted back to the 2nd respondent for consideration afresh and pass appropriate orders in accordance with law after hearing the petitioner as well as the 5th respondent. Such exercise shall be concluded within six weeks from the date of receipt of this order. The petitioner is granted liberty to file necessary counter before the 2nd respondent within two weeks from today.

The writ petition is accordingly disposed of. No costs.

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(G. ROHINI, J.)

13th February, 2006.

Kgr

Issue CC in three days.

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.20512 OF 2005

13th February, 2006.

Between:

R. Dali Naidu. .. Petitioner.

And

The District Collector, Srikakulam District,

Srikakaulam and four others. .. Respondents.